

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
Trinity Christian Center of Santa Ana, Inc.	)	File Nos. BALTT-20100914ADO <u>et al.</u>
(Assignor) and	)	
	)	
MMTC Broadcasting LLC (Assignee)	)	
	)	
Applications for Assignments of Licenses of	)	
44 Television Translator Stations at Various	)	
Locations	)	

TO: Secretary Marlene Dortch  
ATTN: The Commission

**JOINT APPLICATION FOR REVIEW**

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December 29, 2011

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**JOINT APPLICATION FOR REVIEW**

**I. INTRODUCTION**

Pursuant to Section 1.115(b)(2)(iii) of the Commission's Rules, 47 C.F.R. § 1.115,<sup>3</sup> MMTC Broadcasting LLC ("MMTC") and Trinity Christian Center of Santa Ana, Inc. ("Trinity") respectfully submit this Application for Review of the Media Bureau's November 30, 2011 letter order (the "Order") dismissing applications for consent to the assignments of 44 television translator stations from Trinity to MMTC, and cancelling and deleting the stations' call signs.<sup>4</sup>

Each of the stations has been dark for more than 12 consecutive months. However, the Order's reliance on cases where the Bureau declined to exercise its discretion by reinstating

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<sup>3</sup> Section 1.115(b)(2)(iii) supports review where "[t]he action involves application of a precedent or policy which should be overturned or revised." Likewise subsection (b)(2)(i) applies where, as here, "[t]he action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy."

<sup>4</sup> A copy of the Order, which identifies the dismissed applications in its Attachment A, is **EXHIBIT 1** hereto.

expired licenses is misplaced in this particular case. Consistent with longstanding Commission policies to promote minority and women broadcast ownership,<sup>5</sup> and recognizing the Commission's acknowledgement of the grave underrepresentation of minorities and women in television and its desire to find remedies,<sup>6</sup> the Commission should now exercise its discretion by

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<sup>5</sup> See Prometheus Radio Project v. FCC (“Prometheus II”), 652 F.3d 431, 472 (3d Cir. 2011). In ultimately vacating and remanding various FCC rules, including those that relied on the arbitrary and capricious definition of eligible entities, and retaining jurisdiction, the court summarized the Commission's understanding of its diverse ownership initiatives. See id. “Promoting broadcast ownership by minorities and women is, in the FCC's own words, ‘a longstanding policy goal of the Commission, and is consistent with [the Commission's] mandate under [§] 309(j) of the Act.’” Id. (quoting Promoting Diversification of Ownership in the Broadcast Services et al., Report and Order and Fourth Further NPRM, 24 FCC Rcd 5896, 5902 ¶12 (2009)).

<sup>6</sup> See 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 Notice of Proposed Rulemaking, MB Docket Nos. 09-182 and 07-294, FCC 11-186 (released December 22, 2011) (“2010 Quadrennial NPRM”) at 1-11, 23-34, 44, 50, 56-69, 73-76. Therein “the Commission reaffirms that its media ownership rules are necessary to further the Commission's longstanding policy goals of fostering competition, localism, and diversity.” Id. at 4 ¶¶6, 10. The Commission also tentatively concludes that these policy goals “are the appropriate framework within which to evaluate and address minority and female interest as they are related to our media ownership rules.” As discussed further infra, the level of minority television ownership is abysmally low – and dropping rapidly. Based on the Commission's review of the 2009 biennial ownership Form 323 reports, only 2.1 percent of full power commercial stations are now minority owned. See id. at 61 ¶156. That 2009 figure is down 1/3 from where it stood in 2007. See S. Derek Turner, Free Press, Out of the Picture: Minority & Female TV Station Ownership in the United States, at 14 (October 2007) (“Out of the Picture”), available at <http://www.freepress.net/files/otp2007.pdf> (last visited December 27, 2011) (in this 2007 report, minorities owned 3.15 percent of full-power commercial television stations). In the 2010 Quadrennial NPRM, the Commission requested proposals and new ideas “that would advance our longstanding goal of having a wide diversity of broadcast licensees and, more specifically, of increasing the number of minority – and – women-owned broadcast stations.” 2010 Quadrennial NPRM at 68 ¶170. See also Statement of Commissioner Michael J. Copps, 2010 Quadrennial NRPM, at 94 (“I am of the strong opinion that we should be farther along in correcting the inequities of minority and women ownership in broadcast outlets... In a country now nearly one-third minority, it is shocking, and I think embarrassing, that people of color own barely more than 3% of full-power commercial television stations. We must make a prompt and major commitment to ownership diversity”); Statement of Commissioner Robert M. McDowell, 2010 Quadrennial NRPM, at 97 (“In this notice, we also seek comment on the myriad proposals to enhance media diversity that have been introduced over the past few years. Our query is not only understandable but necessary as well in light of the Prometheus II decision, whereby the Third Circuit struck down many of the diversity provisions adopted in the 2007 Diversity Order”); and

waiving the automatic forfeiture provision of Section 312(g) of the Communications Act, 47 U.S.C. §312(g), reinstating the 44 licenses, and granting the assignment applications.<sup>7</sup> Granting such relief will help to ensure minorities and women gain the experience, skills, and access to capital necessary for broadcast ownership, and thus reverse the sharp and dangerous decline in television ownership diversity.<sup>8</sup>

## II. BACKGROUND

In File Nos. BALTT-20100914AAQ *et seq.*, Trinity proposed to donate more than 150 of its television translator stations to MMTC. Trinity's pledge represented the largest donation of stations to a nonprofit organization in the history of broadcasting. For its part, MMTC pledged that the stations would be used to "expand ownership and training opportunities for minorities, women, and other underserved groups."<sup>9</sup>

Most of the assignment applications were granted in the spring of 2010 and, to date, MMTC has assigned 89 of the donated stations to minorities and to non-minority entrepreneurs

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Statement of Commissioner Mignon L. Clyburn, 2010 Quadrennial NRPM, at 99 ("Women, minorities and those who reside in rural areas come into my office painting a bleak picture. They feel disconnected from the public airwaves, and their outlets rarely speak to the needs of their communities. They echo the argument that more relaxed media ownership rules would negatively impact diversity of ownership, but without the proper data, our agency cannot concur or refute that troubling conclusion.... I have been told by those wishing to serve long-neglected communities that female and minority owners have a great record when it comes to diverse hiring, promotion and community service. But stories and anecdotes, no matter how persuasive or discouraging, are not enough. This Commission has a duty to get a firm and informed handle on what is actually happening in our big cities and in our small towns. We need to know how our policies are actually affecting ALL Americans" (emphasis in original)).

<sup>7</sup> See 47 U.S.C. §312(g).

<sup>8</sup> See n. 6 *supra*.

<sup>9</sup> See Trinity Broadcasting Network Astounds MMTC with a 155 Station Donation, MMTC Press Release (August 22, 2010), available at <http://mmtconline.org/lp-pdf/MMTC-Trinity%20082210.pdf> (last visited December 14, 2011).

who are collaborating with MMTC in its diversity efforts through mentoring, hiring and training.<sup>10</sup>

The new licensees are converting their translators to LPTVs. Rather than simply rebroadcasting other stations' signals or satellite feeds, the new licensees will be originating programming to almost four dozen small and medium size communities. Moreover, the new LPTV licensees, including new entrants and minority-owned entities, have the opportunity to benefit from MMTC's "Entrepreneurship Incubator Program." The program's goal is to increase diversity in the television industry by facilitating new entry and assisting licensees as they train, mentor and employ women and minorities.

With regard to the 44 assignment applications, the Order declines to waive the automatic forfeiture provision under Section 312(g). Although the Order's conclusion is understandable in light of the staff's limited authority, the Commission has – and in the circumstances should exercise – its discretion to “extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness” (emphasis added).<sup>11</sup>

### **III. QUESTIONS PRESENTED**

A. Whether the Commission should prioritize longstanding goals of increasing diversity and minority and women ownership over concerns, which do not apply to the instant case involving a nonprofit donor and a nonprofit donee, of creating an incentive for profiting from the sale of a dark station; and

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<sup>10</sup> See Trinity Broadcasting Donates LPTV Stations: MMTC Secures Ownership and Training Opportunities for Minorities and Women, MMTC Press Release (October 10, 2011) (“MMTC 2011 Press Release”), available at <http://mmtconline.org/lp-pdf/Trinity%20Donation%20-%20MMTC%20Closing%20Press%20Release%20102011%20-%20FINAL.pdf> (last visited December 27, 2011).

<sup>11</sup> 47 U.S.C. §312(g).

**B.** Whether the Commission should exercise its discretion under the “equity and fairness” provision of Section 312(g) of the Communications Act to reinstate the 44 station licenses in view of the profoundly urgent need to take dramatic steps that will foster private-sector initiatives to promote minority and women ownership.

#### **IV. ARGUMENT**

**A. The Commission should prioritize ownership diversity over its need to ensure that licensees do not profit from the sale of dark stations**

In determining whether to exercise its discretion to reinstate the 44 licenses and grant the assignment applications pursuant to Section 312(g), the Commission must weigh its objective of advancing minority and female ownership in the broadcast industry against the need to avoid allowing licensees to profit from the sale of dark stations. Where these goals are in conflict, the Commission should prioritize ownership diversity over its dark station/no-profit policy.

Even if this case involved the outright sale of stations for profit from Trinity to MMTC, the slight economic benefit conferred to Trinity would be substantially outweighed by the urgent need to advance minority and women ownership now. However, in the unique circumstances of this case, Trinity would not realize an economic benefit from the assignment of the stations to MMTC. Trinity donated the stations to MMTC and received no compensation. Trinity, like MMTC, is a non-profit organization, and thus Trinity would not even receive a tax deduction for the station donations. Instead, Trinity’s donation of the stations was made to advance the fulfillment of its Christian mission.<sup>12</sup> Further, there is no evidence that Trinity took the stations dark with the intention of seeking an economic benefit from a subsequent potential waiver of the dark station rule. Thus, a grant of waiver would neither lead to nor incentivize a windfall or

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<sup>12</sup> See Trinity Broadcasting Network, About Us, available at <http://www.tbn.org/about-us> (last visited December 27, 2011).

reward to Trinity for having taken the stations dark, and the Commission would be justified in stating, as it decides this case, that it will review each case on its own facts and that it does not intend to grant broadcasters carte blanche to take stations dark and then donate them for a profit. Rather, a grant of a Section 312(g) waiver would advance what the Commission, and the Third Circuit, as shown from its three successive remands,<sup>13</sup> clearly regards as a critical priority – curing the very low and declining representation of minorities in media and telecommunications ownership.

**B. The cases cited by the Bureau to support its refusal to exercise discretion under Section 312(g) are inapplicable, and reinstatement is consistent with Commission policies**

The Bureau analyzed this case in comparison to the traditional line of “natural disaster” cases that support Section 312(g) waivers, but plainly that line of cases is inapposite here.<sup>14</sup>

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<sup>13</sup> See Prometheus Radio Project v. FCC, 373 F.3d 372, 421, n. 58 (3rd Cir. 2004) (“Prometheus I”) (in remanding the Commission’s repeal of the Failed Station Solicitation Rule, the court noted, “[r]epealing its only regulatory provision that promoted minority television station ownership without considering the repeal’s effect on minority ownership is also inconsistent with the Commission’s obligation to make the broadcast spectrum available to all people ‘without discrimination on the basis of race’” (citing 47 U.S.C. §151)); Council Tree Communications v. FCC, 619 F.3d 235, 258 (3rd Cir. 2010) (vacating and remanding the 50% material relationship rule and 10-year holding rule for Designated Entities due to lack of proper notice and opportunity to comment); see also n. 5 supra (quoting Prometheus II, 652 F.3d at 472).

<sup>14</sup> The Bureau noted that the Commission generally exercises its discretion to grant waivers pursuant to Section 312(g) when licensees demonstrate that “natural disasters or other compelling circumstances outside” of their control engender periods of extended silence that lead to automatic forfeiture. See Order at 1-2. The Order holds that Trinity’s decision to discontinue operations was an insufficient basis for reinstatement since Trinity could not demonstrate that “natural disasters or other compelling circumstances forced” the stations off the air. Id. at 2. Specifically, the Order supports the Bureau’s refusal to exercise its discretion by comparing Trinity’s decision to two cases in which licensees made business decisions to remove stations from the air for their pecuniary interests. In Family Life Ministries, for example, the Bureau references the reason that the licensee in that case decided to take its station off of the air because of “the licensee’s desire to meet its goals for the station in a more economical manner.” See Order at 2 (citing Letter from Peter H. Doyle, Chief, Audio Division, to Family Life Ministries, Inc., 2009 WL 4722111). Furthermore, in Kirby Young, 23 FCC Rcd 35 (2008), Commission staff declined to exercise Section 312(g) authority to waive automatic forfeiture to promote

Given the nature of the applications, reinstatement would be entirely consistent with longstanding Commission policies designed to foster the participation of women and minorities in broadcasting. Indeed, applicable precedent states that the Commission will “determine on a case-by-case basis whether any purported equities associated with the individual circumstances warrant reinstatement of a license forfeited pursuant to Section 312(g).”<sup>15</sup> Nothing prevents the Commission from exercising its discretion to reinstate the 44 licenses to serve the interests of equity and fairness and, most important, to comport fully with its own important policy pronouncements cited below.

Accordingly, MMTC and Trinity urge the Commission to grant review and thereby advance longstanding Commission policies to promote diverse ownership.<sup>16</sup> As demonstrated below, these stations present an opportunity to help the Commission materially advance its diversity efforts by increasing women and minority participation in the broadcast industry through training and mentoring programs.

It is indisputable that female and minority participation in the broadcast industry is alarmingly low.<sup>17</sup> For example, in 2007, minorities and women owned only 3.15% and 5.87% of

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equity and fairness where a station had been dark for more than 5 years after a transmitter failed and could not be returned to air for financial reasons. See id. at 35-36. The owners sought to sell the stations to a municipality where other local sources of information were available, and the petitioners did not otherwise demonstrate natural disasters or another compelling circumstance caused the station to go dark. Id. at 36-37. Here, however, nothing suggests that Trinity stood to make a profit by disposing of the stations, making the “natural disasters” line of cases cited in the Order inapplicable.

<sup>15</sup> See A-O Broadcasting Corp., Memorandum Opinion and Order, 23 FCC Rcd 603, 617 ¶26 (2008); Eagle Broadcasting, Memorandum Opinion and Order, 23 FCC Rcd 588, 600 ¶25 (2008).

<sup>16</sup> See supra at n. 3.

<sup>17</sup> See, e.g., Steven Waldman, The Information Needs of Communities: The changing media landscape in a broadband age, Federal Communications Commission, at 248, 251 (2011), available at <http://transition.fcc.gov/osp/inc->



full-power television stations, respectively.<sup>18</sup> In just the two years between 2007 and 2009, a period bracketing much of the economic recession, minority television ownership dropped by one-third.<sup>19</sup> A 2009 study illustrated that radio presents a similar picture, as minorities control a mere 7.24% and also rapidly declining number of commercial radio stations.<sup>20</sup>

**C. The Commission has routinely waived its rules to effectuate diversity in the nation's broadcast industry**

For more than thirty years, waivers of important but non-essential regulations have served as a profoundly effective means of advancing diversity. The most effective version of this concept was the 1978 Tax Certificate policy, a concept the Commission recently supported

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report/The Information Needs of Communities.pdf (last visited December 15, 2011) (“in traditional media, minority ownership and employment has, in recent years, gone backward.”)

<sup>18</sup> See Out of the Picture at 14.

<sup>19</sup> See id. See also 2010 Quadrennial NPRM at 61 ¶156 (recent Commission data revealed that “[t]here were 1,394 full-power commercial television stations in the United States as of November 1, 2009, the information collection date. According to the Commission’s review of the 2009 data, 29 of these stations, or 2.1 percent, are minority owned. Of those 29 stations, 9 have Black or African-American owners, accounting for 0.6 percent of all stations. American Indian or Alaska Native owners control 10 stations, or 0.7 percent, while Asian owners control nine stations, or 0.6 percent. Native Hawaiian or Pacific Islanders own one station, or 0.1 percent. Hispanic or Latino owners control 36 stations, or 2.6 percent. By comparison, our review showed that non-Hispanic White owners control 1,021 stations, or 73.2 percent of the total stations. In addition, the Commission was not able to categorize the race or ethnicity of the ownership for 244 stations, representing 17.5 percent of the total stations, because at least 50 percent of the ownership of these stations was not reportable via the Form 323. Information was unavailable for 64 stations, or 4.6 percent.”)

<sup>20</sup> See Catherine J.K. Sandoval et al., MMTC, Minority Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest, p. 8 (2009), available at [http://mmtconline.org/lp-pdf/Minority Commercial Radio Broadcasters Sandoval%20 MMTC 2009 final report.pdf](http://mmtconline.org/lp-pdf/Minority%20Commercial%20Radio%20Broadcasters%20Sandoval%20MMTC%202009%20final%20report.pdf) (last visited December 15, 2011) (“Of the 324 [distinct] minority radio stations owners, 139 are Hispanic and 129 are African American. Thirty-four Asian-Americans or Asian/Pacific Islanders control full power commercial radio stations in 2009, as do 14 Native Americans owners.”) Id. at 7.

renewing.<sup>21</sup> Other examples of policies structured to allow waivers of medium or low priority policies in order to advance minority ownership have included most of the Commission's other minority ownership policies to date: the failed station solicitation rule ("FSSR"),<sup>22</sup> the distress sales policy,<sup>23</sup> which helped establish Radio One,<sup>24</sup> the leading African American controlled broadcasting company in the nation, in 1980; the "Mickey Leland" attribution rule;<sup>25</sup> the

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<sup>21</sup> See Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, Report, 26 FCC Rcd 2909, 2965 ¶155 (2011).

<sup>22</sup> See Prometheus II, 652 F.3d at 465 (3d Cir. 2011), citing Prometheus I, 373 F.3d at 420 (discussing how the FSSR aims to enhance diversity of ownership in radio by requiring "applicants seeking waivers of the local television rule's requirements to provide notice of the sale to potential out-of-market buyers before it could sell the failed, failing, or unbuilt television station to an in-market buyer").

<sup>23</sup> See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC2d 979 (1978); Clarification of Distress Sale Policy, 44 RR2d 479 (1978); see also Financial Issues Subcommittee Recommendation to the Federal Communications Commission's Recommendations for Incentive-Based Regulations (June 1, 2004), available at <http://transition.fcc.gov/DiversityFAC/adopted-recommendations/IncentiveBasedRegulationsRecommend.doc> (last visited December 26, 2011) (stating that distress sales policies allowed "a broadcaster, in hearing for the nonrenewal or revocation of its license, to elect before the hearing to sell the station to a minority owned company for no more than 75% of fair market value"); see also FCC Adopts Rules to Promote Diversification of Broadcast Ownership (December 18, 2007), available at <http://www.fcc.gov/encyclopedia/media-bureau-2007-headline-archives> (announcing Commission's order which modified the "distress sale policy to allow a licensee – whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues – to sell its station to an "eligible entity" prior to the commencement of the hearing"); see also Prometheus II, 652 F.3d at 438 (remanding portions of the Commission's order that relied "on the revenue-based 'eligible entity' definition, and the FCC's decision to defer consideration of other proposed definitions (such as for a socially and economically disadvantaged business ('SDB'), so that it may adequately justify or modify its approach to advancing broadcast ownership by minorities and women."))

<sup>24</sup> See WOL, Inc., 79 FCC2d 647 (1980) (granting distress sale of WOL by the Sonderling Broadcasting Company to Almic Broadcasting – now Radio One).

<sup>25</sup> See Multiple Ownership of AM, FM and Television Broadcast Stations (MO&O) (on reconsideration), 100 FCC2d 74, 94 (1985) ("1985 Multiple Ownership - Reconsideration") (previous and subsequent histories omitted) ("our national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership.") In this decision, the Commission adopted the Mickey Leland Rule, which provided that an interest of up to 49%

comparative hearing preference policy;<sup>26</sup> the construction permit extension rule;<sup>27</sup> and the AM Expanded Band Initiative.<sup>28</sup>

In recent examples of pro-diversity initiatives, the Commission has established a practice of making accommodations to its rules to effectuate diversity and minority ownership in the broadcast industry and thus serve the public interest. In the 2007 Broadcast Diversity Order, the Commission granted eligible entities the greater of either an 18-month extension or the remainder of the construction period to build out facilities upon acquiring an expiring construction permit.<sup>29</sup> The Commission declared that the “revision [was] intended to foster

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in minority-controlled stations would not be subject to attribution with respect to two stations beyond the otherwise applicable national ownership caps.

<sup>26</sup> See TV-9, Inc. v. FCC, 495 F.2d 929, 935-38 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974).

<sup>27</sup> See Promoting Diversification of Ownership in the Broadcasting Services, Report and Third Further NPRM, 23 FCC Rcd 5922, 5928 (rel. 2008) (“2007 Broadcast Diversity Order”).

<sup>28</sup> See Request for Waiver of Rules Requiring Return of AM Licenses, Implementation of the AM Expanded Band Allotment Plan, MM Docket No. 87-267 (March 27, 2006), p. 4 (“Waiver Request for AM Expanded Band”) (quoting one of the license restrictions: “Pursuant to MM Docket 87-267, after the 5 year period starting from the date of the facility specified herein is initially licensed, licensee will surrender either the expanded band license or its existing band license.”)

<sup>29</sup> See 2007 Broadcast Diversity Order, 23 FCC Rcd at 5928 ¶10. Previously, the rule required automatic forfeiture, with limited waiver provisions, if construction was not complete by the end of the construction period and filed a license application. See id. at 5928-29 ¶11-12. The Commission adopted this rule to “minimize instances when those who do not have the intent or foresight to ensure the prompt initiation and conclusion of construction “tie up” the spectrum indefinitely.” Id. at 5929 ¶13. At the same time, the Commission recognized that the rule and Section 319 “were intended to strike a balance between fundamental interests in expediting new service to the public and preventing the warehouse of scarce spectrum, and our recognition that permit holders sometimes encounter unforeseen obstacles....” Id. See also Prometheus II, 652 F.3d at 472 (vacating the rule on other grounds); 2010 Quadrennial NPRM at 65 ¶168 (requesting comment on how the Commission should handle the provisions in the Diversity Order that were vacated because they relied on the Commission’s arbitrary and capricious eligible entity standard).

diversity of ownership by providing eligible entities with additional market entry opportunities.”<sup>30</sup>

The Commission has also made exceptions to its AM Expanded Band license return policy<sup>31</sup> after several petitioners sought waivers of the rules and a stay of the effective date for the anticipated return of Expanded Band licenses.<sup>32</sup> In those cases, waiver advocates urged the Commission, *inter alia*, to extend the time for return of these licenses in cases where incumbents assigned them authorization to small businesses,<sup>33</sup> and requested the Commission to reinstate authorizations that had been surrendered.<sup>34</sup> Petitioners demonstrated that waivers would encourage incumbents to assign those authorizations to small and minority-owned enterprises.<sup>35</sup>

By applying similar approaches to the applications for these 44 stations, the Commission could make significant strides in advancing minority and women participation in broadcasting.<sup>36</sup> The MMTC training and mentorship initiatives for these stations will help ensure that more minorities and women gain the experience and guidance necessary to be successful as broadcast managers, operators, and, ultimately, owners.<sup>37</sup>

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<sup>30</sup> *Id.* at 5928 ¶10.

<sup>31</sup> See 47 C.F.R. §73.3555, Note 10; see also Waiver Request for AM Expanded Band, *supra*.

<sup>32</sup> See Waiver Request for AM Expanded Band; see also Petition for Stay of Effective Dates, Implementation of the AM Expanded Band Allotment Plan, MM Docket No. 87-267 (March 27, 2006).

<sup>33</sup> See Waiver Request for AM Expanded Band at 5-6.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* at 2.


<sup>36</sup> See MMTC 2011 Press Release.

<sup>37</sup> See, e.g., Federal Advisory Committee for Diversity in the Digital Age, Recommendation on Equal Employment Opportunity Forum & Revisions (December 3, 2009), available at <http://transition.fcc.gov/DiversityFAC/recommendations.html> (follow link to “Equal Employment Opportunity Forum & Revisions”) (last visited December 15, 2011). The Diversity Committee has recommended that the Commission “consider whether additional compliance

**WHEREFORE**, the Commission should grant this Application for Review and the relief requested herein.

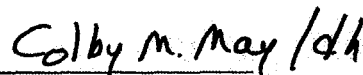
Respectfully submitted,

**MMTC BROADCASTING LLC**

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December 29, 2011

Attachment

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options should be added to the Commission's EEO rules so that more activities focused on retention and promotion of diverse candidates would 'count' towards EEO compliance." Id.

## **EXHIBIT 1**



Federal Communications Commission  
Washington, D.C. 20554

November 30, 2011

Trinity Christian Center of Santa Ana, Inc.  
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Re: Applications for Assignment of License  
of 44 Television Translator Stations at  
Various Locations

Dear Applicants:

This is with respect to applications for assignment of the licenses of 44 television translator stations from Trinity Christian Center of Santa Ana, Inc. and Trinity Broadcasting Network ("Trinity") to MMTC Broadcasting LLC ("MMTC").<sup>1</sup> Commission records show that the licenses for these stations are expired pursuant to Section 312(g) of the Communications Act, which provides that:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term or condition of the license to the contrary . . . .<sup>2</sup>

Section 312(g) also gives the Commission the discretion, following an automatic forfeiture, to reinstate a license "if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness."

Trinity and MMTC maintain that equity and fairness support reinstatement of these expired licenses and the authorization of a one-year period after the licenses are assigned to enable the stations to return to the air. We have carefully considered the parties' request and conclude that they have failed to demonstrate circumstances that warrant exercise of our discretion under Section 312(g) to reinstate a license "to promote equity and fairness." In the past, the Commission has exercised its discretion in cases involving natural disaster or other compelling circumstances outside of the licensee's control which

<sup>1</sup> The application file numbers, station call signs and the dates the stations went silent are provided in Attachment A to this letter.

<sup>2</sup> 47 U.S.C. § 312(g). Section 74.15(f) of the Commission's Rules, 47 C.F.R. § 74.15(f), also provides that "The license of a . . . TV translator or TV broadcast booster, or low power TV station will expire as a matter of law upon failure to transmit broadcast signals for any consecutive 12-month period notwithstanding any provision, term or condition to the contrary."

forced cessation of the station's operations. For example, in *V.I. Stereo Communications Corp.*,<sup>3</sup> the Commission on reconsideration concluded that the station's extended silence was understandable and that reinstatement was warranted, given the fact that the station's tower had been destroyed by a hurricane and, after it was rebuilt, again sustained substantial damage from three more hurricanes. In another case, the staff reinstated an expired permit when the station's extended silence was the result of the licensee's compliance with an order issued by a state court.<sup>4</sup>

Here, the parties have not demonstrated natural disasters or other compelling circumstances which forced the station to cease operations. Instead, Trinity made a business decision to take the stations off the air because of "a reduction of local support which we believe is associated with the national transition from analog to digital broadcasting," and its desire to "[complete] a market analysis to determine the viability and level of local support or the alternative possibility of a sale of the station."<sup>5</sup> We believe that the facts here are similar to cases where Commission staff declined to exercise its discretion under Section 312(g) of the Act. For example, in *Kirby Young*,<sup>6</sup> an AM radio station's transmitter failed in 2002 and the licensee represented that it did not have the financial resources to return the station to the air. The licensee later entered into an agreement to sell the station and contended that fairness and equity would be served by reinstating the license so that the station could be sold to a potential buyer. The staff disagreed, finding no claim that "natural disasters or other compelling circumstances forced the cessation of the Station's operations." Similarly, in *Family Life Ministries*, the staff declined to exercise its discretion under Section 312(g) where the station was taken off the air "due to [the licensee's] desire to meet its goals for the station in a more economical manner."<sup>7</sup>

The parties acknowledge that the Commission generally reinstates expired licenses only where the licensee experiences events outside of its control, but believe the public interest would be served by reinstating the license here because MMTC intends to use the stations to create an "Entrepreneurship Incubator" program to provide minorities and women with the opportunity to learn management skills with a view towards becoming broadcast station owners.<sup>8</sup> The parties assert that reinstating Trinity's expired licenses is consistent with the Commission action amending Section 73.3598 of the Commission's Rules to afford eligible entities that acquire an expiring construction permit for a new station additional time to build out the facility.<sup>9</sup> That rulemaking proceeding, however, addressed new

<sup>3</sup> *V.I. Stereo Communications Corp.*, 21 FCC Rcd 14259 (2006).

<sup>4</sup> *Letter to Mark Chapman, Court-Appointed Agent*, 22 FCC Rcd 6578 (Audio Div. 2007).

<sup>5</sup> See, e.g., FCC File Nos. BLESTA-20091223ANS and BLESTA-20091223ANW, Exhibit 2. For station K15DB, on November 13, 2009, Trinity reported that the station went silent on November 14, 2008 because the building housing the station's equipment was destroyed by fire. Trinity also reported that construction of the new building "will be completed soon" and service restored. See FCC File No. BLESTA-20091113ACW, Exhibit 2. Trinity, however, never notified the Commission that the station resumed operations.

<sup>6</sup> *Kirby Young*, 23 FCC Rcd 35 (Audio Div. 2008).

<sup>7</sup> *Letter from Peter H. Doyle, Chief, Audio Division, to Family Life Ministries, Inc.*, 2009 WL 4722111 (rel. Oct. 8, 2008); see also *Letter to ETC Communications, Inc.*, 25 FCC Rcd 10686 (Vid. Div. 2010) (Staff refused to exercise its discretion under 312(g) where licensee made a business decision to take the station off the air in February 2007 due to lack of funds, and remained off air even though it received a substantial non-refundable deposit from a prospective buyer in July 2007), *Letter to Mr. Zacarias Serrato*, 20 FCC Rcd 17232 (Audio Div. 2005) (Staff refused to exercise its discretion, finding that the licensee's failure to return the station to service within 12 months was due to its business decision not to find an alternative transmitter site promptly due to cost).

<sup>8</sup> See FCC File No. BALTT-20100914AAQ, Exhibit 11 at p. 2. The waiver request for the expired stations was filed with this lead application, which did not require a waiver because the station sought to be assigned. W33CM, Decatur, Alabama, was on the air.

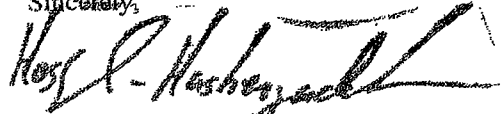
<sup>9</sup> *Id.* at 4-6.



station construction permits that had not yet expired and not station licenses that were automatically forfeited under Section 312(g) of the Act for failing to transmit a broadcast signal for a consecutive 12-month period.<sup>10</sup>

Thus, in accordance with precedent, we decline to exercise our discretion under the Section 312(g) "equity and fairness" provision to reinstate the licenses listed in Attachment A to this letter, which expired by operation of law due to circumstances within Trinity's control. In view of the foregoing, the station licenses ARE HEREBY CANCELLED and the call signs DELETED, and the pending applications for assignment of license ARE DISMISSED.

Sincerely,



Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

cc: Henry A. Solomon, Esq.

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<sup>10</sup> See *In the Matter of Promoting Diversification of Ownership in the Broadcast Service*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5928-31 (2007). The parties also cite to a filing made in MM Docket No. 87-267 requesting that the Commission waive its policy requiring that AM licensees operating in the expanded AM band return one of their AM allotments for cancellation, and instead permit the transfer of the second allotment to a small business.. That request remains pending and again, does not pertain to the reinstatement of licenses that were automatically forfeited pursuant to Section 312(g) of the Act.

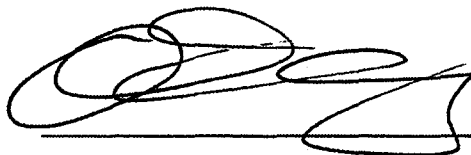
		ATTACHMENT A					
FILE NUMBER		CALL SIGN	FAC ID	CITY	STATE	APPLICANT	DATE WENT SILENT
BALTT	20100914ADO	K41FQ	67916	SPRINGFIELD	MO	TRINITY BROADCASTING NETWORK	8-May-08
BALTT	20100914ABJ	K15DB	67978	SANTA BARBARA	CA	TRINITY BROADCASTING NETWORK	14-Nov-08
BALTT	20100914AFM	W49CQ	67990	COOKEVILLE	TN	TRINITY BROADCASTING NETWORK	24-Jun-09
BALTT	20100914AFE	W26CD	47689	SCRANTON	PA	TRINITY CHRISTIAN CENTER OF SANTA	26-Jun-09
BALTT	20100914ADH	W17CS	129451	MARQUETTE	MI	TRINITY BROADCASTING NETWORK	1-Jul-09
BALTT	20100914ADD	W34CN	14335	MEDWAY	ME	TRINITY BROADCASTING NETWORK	6-Jul-09
BALTTL	20100914AEQ	W20BA	47720	MASSENA	NY	TRINITY CHRISTIAN CENTER OF SANTA	9-Jul-09
BALTT	20100914AET	W51BI	67934	KIRTLAND	OH	TRINITY BROADCASTING NETWORK	13-Jul-09
BALTTL	20100914AEJ	K14MJ	130818	FARMINGTON	NM	TRINITY CHRISTIAN CENTER OF SANTA	10-Dec-09
BALTT	20100914AFS	K57FC	67938	CORPUS CHRISTI	TX	TRINITY BROADCASTING NETWORK	14-Dec-09
BALTT	20100914AFT	K17BP	68039	PALESTINE	TX	TRINITY BROADCASTING NETWORK	29-Jan-10
BALTT	20100914ABR	W58CZ	67874	AUGUSTA	GA	TRINITY BROADCASTING NETWORK	1-Feb-10
BALTT	20100914ADT	W27CX	67995	NATCHEZ	MS	TRINITY BROADCASTING NETWORK	1-Feb-10
BALTT	20100914ADS	W30BY	68056	GRENADA	MS	TRINITY BROADCASTING NETWORK	5-Feb-10
BALTT	20100914AEN	W52DF	67927	ALBANY	NY	TRINITY BROADCASTING NETWORK	13-Mar-10
BALTT	20100914ABL	W14CM	67977	DOVER	DE	TRINITY BROADCASTING NETWORK	15-Mar-10
BALTT	20100914AEU	W32AR	68017	LEXINGTON	OH	TRINITY BROADCASTING NETWORK	24-Mar-10
BALTT	20100914AAZ	K16ER	67875	FORT SMITH	AR	TRINITY BROADCASTING NETWORK	25-Mar-10
BALTT	20100914ABD	K27FC	60832	PARAGOULD	AR	TRINITY BROADCASTING NETWORK	26-Mar-10
BALTT	20100914AEV	W52DS	68064	YOUNGSTOWN	OH	TRINITY BROADCASTING NETWORK	26-Mar-10
BALTT	20100914AGI	K35CN	68031	GREEN RIVER	WY	TRINITY BROADCASTING NETWORK	29-Mar-10
BALTT	20100914ABW	W25CP	68034	VALDOSTA	GA	TRINITY BROADCASTING NETWORK	1-Apr-10
BALTT	20100914ACI	K53FF	67984	COEUR D'ALENE	ID	TRINITY BROADCASTING NETWORK	1-Apr-10
BALTT	20100914ACH	K47BE	68023	BOISE	ID	TRINITY BROADCASTING NETWORK	1-Apr-10
BALTT	20100914ADF	W51AG	67882	PRESQUE ISLE	ME	TRINITY BROADCASTING NETWORK	1-Apr-10
BALTT	20100914AFL	K31DP	68096	YANKTON	SD	TRINITY BROADCASTING NETWORK	13-Apr-10
BALTT	20100914AFJ	K43GX	67900	MADISON	SD	TRINITY BROADCASTING NETWORK	13-Apr-10
BALTT	20100914ACM	W34DL	68045	CHAMPAIGN	IL	TRINITY BROADCASTING NETWORK	13-Apr-10
BALTT	20100914ABV	W22BP	47713	THOMASVILLE	GA	TRINITY CHRISTIAN CENTER OF SANTA	13-Apr-10
BALTT	20100914ACS	K39FW	129419	GARDEN CITY	KS	TRINITY BROADCASTING NETWORK	13-Apr-10
BALTT	20100914ABS	W33AL	67887	BRUNSWICK	GA	TRINITY BROADCASTING NETWORK	4-Jun-10
BALTT	20100914AEM	K19CU	67952	CARSON CITY	NV	TRINITY BROADCASTING NETWORK	7-Jun-10
BALTT	20100914AEK	K18CT	67943	RATON	NM	TRINITY BROADCASTING NETWORK	29-Jun-10
BALTT	20100914ACJ	K26EW	68636	IDAHO FALLS	ID	TRINITY BROADCASTING NETWORK	1-Jul-10
BALTT	20100914AEB	K49FF	68048	GRAND FORKS	ND	TRINITY BROADCASTING NETWORK	13-Jul-10

FILE NUMBER		CALL SIGN	FAC ID	CITY	STATE	APPLICANT	DATE WENT SILENT
BALTT	20100914ADN	K16FE	129709	ROLLA	MO	TRINITY BROADCASTING NETWORK	16-Jul-10
BALTT	20100914AAT	W57BV	986	FLORENCE	AL	TRINITY BROADCASTING NETWORK	19-Jul-10
BALTT	20100914AAW	W24CK	60631	SELMA	AL	TRINITY BROADCASTING NETWORK	21-Jul-10
BALTT	20100914ACX	K45DI	68069	MERMENTAU	LA	TRINITY BROADCASTING NETWORK	23-Jul-10
BALTT	20100914AGG	K43DV	68019	VICTORIA	TX	TRINITY BROADCASTING NETWORK	27-Jul-10
BALTT	20100914AFQ	K26AP	67948	BROWNWOOD	TX	TRINITY BROADCASTING NETWORK	30-Jul-10
BALTT	20100914AEH	K56IU	129680	ALAMOGORDO	NM	TRINITY BROADCASTING NETWORK	2-Aug-10
BALTTL	20100914ADU	K42EO	68636	MISSOULA	MT	TRINITY BROADCASTING NETWORK	17-Aug-10
BALTT	20100914AGA	K45FJ	68094	SAN ANTONIO	TX	TRINITY BROADCASTING NETWORK	19-Aug-10

**CERTIFICATE OF SERVICE**

I, David Honig, hereby certify this 29<sup>th</sup> day of December 2011 that I have caused a copy of the foregoing Joint Application for Review to be served by United States first class mail upon the following:

William Lake, Esq.  
Chief, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554

A handwritten signature in black ink, appearing to read 'David Honig', written over a horizontal line.

David Honig